

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:12-cv-00521-FDW**

MICHAEL TORIANO MORRIS,)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

**MEMORANDUM OF
DECISION AND ORDER**

THIS MATTER is before the Court on Petitioner’s Amended Motion to Vacate Sentence and Petition for Relief under 28 § [sic] U.S.C. 2241; Alternative Petition for Writ of *Coram Nobis*; and Alternative Petition for a Writ of *Audita Querela* [CV Doc. 1];^{1,2} and the Government’s Motion to Dismiss [CV Doc. 10]. Petitioner is represented by private counsel, Claire J. Rauscher.

On March 6, 2003, Petitioner pleaded guilty to conspiracy to possess with intent to distribute 5 kilograms or more of cocaine and 50 grams or more of a cocaine base in violation of 21 U.S.C. § 846. [CR Doc. 30: Plea Agreement]. Petitioner was sentenced to 360 months’ imprisonment, which included a sentencing enhancement under 21 U.S.C. § 851. [CR Doc. 116: Judgment]. On September 20, 2005, Petitioner filed a motion to vacate pursuant to 28 U.S.C. § 2255, which this Court denied and dismissed on the merits on August 7, 2006. [CR Doc. 123,

¹ Citations to the record herein contain the relevant document number referenced preceded by either the letters “CV,” denoting that the document is listed on the docket in the civil case file number 3:12-cv-00521-FDW, or the letters “CR,” denoting that the document is listed on the docket in the criminal case file number 3:03-cr-00016-FDW-1.

² Petitioner filed a supplement to this motion, which was inadvertently docketed as a motion. [See Doc. 5]. The Court will instruct the Court to term this motion.

130]. The Fourth Circuit affirmed the dismissal of Petitioner's motion to vacate. United States v. Morris, 215 Fed. App'x 252 (4th Cir. 2007). On August 17, 2012, Petitioner filed a second motion to vacate, which this Court dismissed as successive. [CV Docs. 1, 2].

Thereafter, Petitioner filed the pending motion to amend his previously dismissed, successive motion to vacate, asserting that he requests relief solely pursuant to 28 U.S.C. § 2241 or, alternatively, pursuant to 28 U.S.C. § 1651(a) or, alternatively, pursuant to the writ of *audita querela*. [CV Doc. 4]. This matter was stayed pending the Fourth Circuit's decision in United States v. Surratt, No. 14-6851. [6/30/2015 Docket Entry]. On March 22, 2017, Petitioner was released from Federal Bureau of Prisons (BOP) custody after the President commuted his sentence. [See CR Doc. 185]. On April 11, 2017, the Fourth Circuit dismissed Surratt as moot after Surratt's sentence was commuted by the President. 855 F.3d 218, 219 (4th Cir. 2017). The Government then moved to dismiss the pending petition for relief under § 2241. [CV Doc. 10]. As grounds, the Government argues that the petition is moot because, like Surratt, Petitioner's sentence was commuted, and now, Petitioner has been released from custody. [CV Doc. 10].

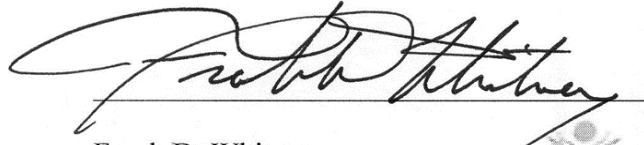
The Court will grant the Government's motion to dismiss and deny and dismiss this matter as moot. Petitioner has been released from BOP custody and no longer has a live case or controversy.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion [Doc. 4] is **DENIED as moot**.
2. The Government's Motion to Dismiss [Doc. 10] is **GRANTED**.
3. The Clerk is instructed to term the motion at Docket No. 5.

4. The Clerk is instructed to terminate these proceedings.

Signed: June 22, 2021


Frank D. Whitney
United States District Judge

